

ARKANSAS SUPREME COURT

No. CACR 05-241

ISAAC DEWAYNE RUSSELL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 19, 2008

PRO SE PETITION AND AMENDED
PETITIONS TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [CIRCUIT
COURT OF PULASKI COUNTY, CR
2003-3247]

PETITIONS DENIED.

PER CURIAM

In 2004, petitioner Isaac Dewayne Russell was found guilty of first-degree domestic battering after a trial to the court. He was sentenced to 144 months' imprisonment which was enhanced by an additional 48 months' imprisonment because the offense was committed in the presence of a child. The Arkansas Court of Appeals affirmed. *Russell v. State*, CACR 05-241 (Ark. App. Oct. 26, 2005).

Now before us is petitioner's pro se petition and amended petitions to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.¹ The petition to reinvest jurisdiction in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission.²

¹After filing the petition to reinvest jurisdiction, petitioner filed a pro se motion to withdraw the petition and later filed a motion to withdraw the motion to withdraw. Thus, the motion to withdraw the petition is moot. Petitioner also filed numerous pro se motions to amend the petition, treated as amended petitions. The issues raised in the amended petitions reiterate claims made in the original petition.

²For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

Dansby v. State, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). These errors are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor or a third-party confession to the crime during the time between conviction and appeal. *Id.*

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error coram nobis is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005).

In order to meet one of the four criteria for error coram nobis relief set out in *Pitts*, *supra*, petitioner attempts to couch his argument in terms of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Petitioner contends that material exculpatory evidence was withheld by the prosecutor, and identifies the evidence as an Arrest/Disposition Report (“report”) issued by the North Little Rock Police Department. Based on the report, petitioner first claims that there was no complainant or witness who filed a complaint against him. He next maintains that the lack of a complainant or witness named in the report establishes that the felony information and his arrest were not properly supported by an affidavit or warrant. As a result, he alleges that he was arrested and charged without probable cause which violated his right to due process.³

³He makes another argument regarding a “received” stamp affixed to one version of the report that is not found on the other report. He contends that trial counsel participated in a conspiracy with the

However, the facts presented do not indicate that material evidence was suppressed by the prosecutor. A letter to petitioner from the public defender's office that is attached to the original petition as an exhibit indicates that the arrest report in petitioner's possession was obtained from the trial court's file. Therefore, the arrest report comprising the linchpin of petitioner's arguments had been available to trial counsel prior to trial and there is no legitimate indication otherwise. Petitioner fails to establish that any document related to his arrest had been suppressed by the prosecutor or counsel, was extrinsic to the record or was somehow hidden or unknown. *Larimore v. State, supra*; *Echols v. State, supra*.

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). Petitioner has failed to make a showing that the allegations contained in the petition and amendments are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis.

Petitions denied.

prosecutor to deprive petitioner of his constitutional rights which is somehow proven by the presence or absence of the stamp. This contention will not be considered as the allegation concerning trial counsel's conduct in itself does not fall within one of the four categories for coram nobis relief. *Pitts v. State, supra*.